



April 7, 2020

**VIA ELECTRONIC FILING**

The Honorable Jocelyn Boyd  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29210

RE: Request of South Carolina Electric & Gas Company to Transfer Real Property;  
Obtain Certain Waivers Associated with Real Property Transfers; Approve the  
Use of Bill Inserts and Election of Bill Credit; and Request for Expedited  
Consideration;  
Docket No. 2018-376-E

Dear Ms. Boyd:

As the Public Service Commission of South Carolina ("Commission") is aware, South Carolina Electric & Gas Company ("SCE&G") and SCANA Corporation entered into a November 23, 2018 settlement agreement and two subsequent addenda (collectively "the Settlement Agreement") to resolve all aspects of the litigation captioned *Lightsey v. SCE&G, et al.*, civil action no. 2017-CP-25-00335 known as the "*Lightsey* case" or "ratepayer litigation" resulting from the abandonment of the V.C. Summer Nuclear Station Units 2 and 3. SCE&G previously notified the Commission of the Settlement Agreement by filing dated November 30, 2018, in the above-referenced docket.

SCE&G and SCANA agreed as part of the Settlement Agreement to transfer ownership of certain real property owned by SCE&G to a real estate trust that was part of a large Consumer Benefit Fund (the "CBF") to monetize the value of such property in order to maximize the cash benefits to the plaintiff consumers in the *Lightsey* case. The Settlement Agreement further provided for additional properties that the plaintiff customers could swap for the certain initial properties to be sent to the trust, again as part of the agreement to maximize the settlement value.

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The Honorable Jocelyn G. Boyd

April 7, 2020

Page 2

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In late 2019, the parties to the Settlement Agreement agreed to a consent order in the trial court to effectuate additional property swaps.<sup>1</sup> The parties agreed to transfer certain properties to the initial settlement property list from the swap property list. The parties also agreed to seek approval from this Commission prior to swap for any property in the event that transfer of such property required approval from the Commission. One of the properties approved by the Commission included the Old State Road Tract.

As a result of that consent order, Dominion Energy South Carolina, Inc.<sup>2</sup> (“DESC”) requested that this Commission approve the swap of the Old State Road Tract by filing dated December 11, 2019, in Docket 2018-376-E.<sup>3</sup> At that time the Old State Road Tract contained 140 acres. The Commission approved the property swap transfer by Order 2020-34 dated January 8, 2020. In that Order, the Commission found (1) that the Old State Road Tract did not constitute utility property as defined by Section 58-27-1300 of the South Carolina Code of Laws (2015), (2) that waiver of the Bid Requirement and Sub-Division Requirement set forth in Order No. 92-931 was proper, and (3) that the parties could pursue sale of the property as per the Settlement Agreement.

The Special Master Trustee in the *Lightsey* matter has moved in the trial court for approval for the sale of the Old State Road Tract for inclusion in the CBF. The parties have now entered into a subsequent Consent Order<sup>4</sup> regarding this enhanced Old State Road Tract to effectuate the sale to the purchaser. In that Consent Order, DESC agreed to add an additional 85.40 acres to the Old State Road Tract, bringing the total acreage to be transferred to the CBF to 225.40, i.e., the 140 acres previously approved by this Commission in Order No. 2020-34 plus an additional 85.40 acres.

Per the Consent Order, the 85.40 acres and the 140 acres previously approved for sale by this Commission will be sold at the same price per acre. While the total amount remains under seal, the sales price of the newly enhanced Old State Road Tract will exceed the dollar thresholds for the Bid Requirement and Sub-Division Requirement (each defined below) imposed by Order 92-931. Sale of this enhanced Old State Road Tract will benefit the consumer plaintiffs as contemplated by the

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<sup>1</sup> The 2019 request was the second request to swap properties. SCE&G sought swap approval in 2018. The Commission granted SCE&G’s request and found that the transfer and waiver request “appear generally not to be inconsistent with this Commission’s ruling in the Nuclear Dockets, and frees up funds for ratepayer relief.” See Order No. 2018-824.

<sup>2</sup> Upon approval of Docket Nos. 2017-207, 305, and 370-E, SCE&G was renamed Dominion Energy South Carolina, Inc. effective April 29, 2019.

<sup>3</sup> That filing sought approval for other property swaps. None of the other transactions are relevant to this request.

<sup>4</sup> The Consent Order remains under seal per order of the trial court until the time of closing of the sale of the enhanced Old State Road Tract.

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The Honorable Jocelyn G. Boyd

April 7, 2020

Page 3

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negotiated terms of the Settlement Agreement to free up funds for additional ratepayer relief.

DESC now seeks approval to modify the Old State Road Tract to complete the sale contemplated by the Settlement Agreement and Order 2020-34. DESC therefore requests that the Commission issue an order approving the transfer of this property to the CBF trust to allow the Special Master Trustee to sell the property to maximize the settlement benefit to the ratepayer.

As a result and per the terms of the Settlement Agreement and Consent Order, DESC requests that the Commission issue an order:

- (1) approving transfer of this non-utility property Old State Road Tract, which will now total 225.40 acres;
- (2) waiving the Bid Requirement from Order No. 92-931 for the sale of the Old State Road Tract now composed of 225.40 just as the Commission did when the property totaled 140 acres; and
- (3) waiving the Sub-Division Requirement from Order No. 92-931 as applicable for that same 225.40-acre property just as the Commission did when the property totaled 140 acres.

### **Property Transfer and Related Property Waivers at Issue**

Section 58-27-1300 of the South Carolina Code of Laws (2015) requires DESC to obtain approval from the Commission when the company seeks to “sell, assign, transfer, lease, consolidate, or merge its utility property” that has a fair market value in excess of \$1,000,000. Furthermore, Order No. 92-931, dated November 13, 1992 and issued in Docket No. 89-230-E/G, approved certain recommendations and reporting requirements regarding real property owned by DESC. Relevant to this request, Order No. 92-931 requires a competitive bidding process for sales of real property with an appraised value in excess of \$50,000, known as the “Bid Requirement.” See Order No. 92-931, App’x A at 20-21. The order also requires Commission review of any proposed sub-division of tracts of land into parcels that have a market value of less than \$150,000, known as the “Sub-Division Requirement.”

#### **I. The enhanced Old State Road Tract property does not qualify as utility property**

Just as was the case when the Old State Road Tract property consisted of 140 acres, the 225.40-acre Old State Road Tract does not constitute utility property. The property has neither been classified as utility property nor has it been used as utility property in the last five years. As such it qualifies as non-utility property.

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Accordingly, the enhanced Old State Road Tract does not need prior approval from the Commission pursuant to Section 58-27-1300.

That does not, however, end the inquiry. Because the proposed sale value of this enhanced Old State Road Tract property exceeds certain thresholds set forth in Commission Order No. 92-931, it remains subject to the Bid Requirement and Sub-Division Requirement. DESC requests that the Commission waive both the Bid Requirement and Sub-Division Requirement that apply to the enhanced property.

## **II. Request for Waiver of the Bid Requirement for the enhanced Old State Road Tract**

Order No. 92-931 articulated the requirement for the competitive bidding process for sale of property valued in excess of \$50,000. *See* Order No. 92-931, App'x A at 20-21. The sale price of the enhanced Old State Road Tract will exceed \$50,000. The Commission designed that requirement to protect against affiliate preferences and to ensure disposal of real property in a manner that promotes fair and equitable treatment of the parties to the proposed transaction. The Settlement Agreement and Consent Order meet that intent and purpose.

DESC has no further use for this enhanced Old State Road Tract property other than to meet its obligations under the Settlement Agreement and Consent Order. The transfer of this property will satisfy a negotiated settlement meant to maximize settlement relief to the plaintiff consumers. Maximizing value to that group further satisfies the purpose of the bid requirement. Moreover, the plaintiff consumers (all former SCE&G ratepayers) are independent from DESC. Based on the foregoing, the transfer of the property in this manner encompasses the fair and equitable considerations espoused by Order No. 92-931. DESC therefore requests an order authorizing transfer of the 225.40 acres now comprising the Old State Road Tract to the plaintiff consumers without engaging in a competitive bid process.

## **III. Waiver of Sub-Division Requirement**

Order No. 92-931 also imposed a requirement that “[b]efore a tract of land is sub-divided into parcels that have market values of less than \$150,000, the Company must file such proposed partitioning with the Commission for review.” *See* Order No. 92-931, App'x A at 21. None of the parties to the Settlement Agreement have proposed to sub-divide the enhanced Old State Road property at this time. In fact, the plaintiff consumers have agreed to sell the enhanced Old State Road as the full 225.40 acres. But even if the plaintiff consumers later decided to subdivide, such a sub-division would be ancillary to the transfer itself and would not involve any affiliate transactions such as those subject to review under Order No. 92-931. DESC therefore requests in the interest of judicial economy that the Commission issue an order waiving this requirement if such subdivision request occurs prior to the transfer

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under the Settlement Agreement. Such expediency will only benefit the plaintiff consumers and seek to achieve the goal of maximizing settlement value.

#### **IV. Request for Expedited Consideration**

The Consent Order contains a limited time frame window for the parties to complete the contemplated transfer of property to effectuate the Settlement Agreement. In light of this tight schedule, DESC respectfully requests that the Commission expedite the requests herein and issue an order ruling on these requests as soon as possible.

By copy of this letter, we notify counsel for the South Carolina Office of Regulatory Staff of this request and include a certificate of service to that effect.

If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,



Matthew W. Gissendanner

MWG/kms  
Enclosure

cc: Jeffrey M. Nelson, Esquire  
Andrew M. Bateman, Esquire  
Becky Dover, Esquire  
Carri Grube-Lybarker, Esquire  
(all via electronic and U.S. First Class Mail w/enclosure)

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2018-376-E**

IN RE:

Request of South Carolina Electric & Gas )	<b>CERTIFICATE OF SERVICE</b>
Company to Transfer Real Property; Obtain )	
Certain Waivers Associated with Real )	
Property Transfers; Approve the Use of Bill )	
Inserts ad Election of Bill Credit; and )	
Request for Expedited Consideration )	
_____ )	

This is the certify that I have caused to be served this day one (1) copy of  
Dominion Energy South Carolina, Inc.'s **Letter of April 7, 2020** to the persons named  
below at the addresses set forth via electronic mail and U.S. First Class Mail:

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Karen M. Scruggs

Cayce, South Carolina

This 7th day of April, 2020